effect that he found the damages to be $300. No further action of the court was necessary to entitle plaintiff to the entry of a formal judgment of $300, damages and costs, The entry of judgment made by the judge was a true record of the judgment actually rendered, which can not be corrected at a subsequent term to include interest.

JUSTICE COURT JUDGMENT—EXECUTION—TRANSCRIPT—FILING IN CIRCUIT COURT—VALIDITY —Execution was issued on a justice court judgment and delivered to a constable to serve. Return was made with the indorsement: "Demand made August 7, 1894: return execution; no part satisfied; August—, 1894." A transcript of the judgment was then filed in the office of the clerk of the circuit court of that county. Execution was issued on the transcript and levied on the debtor's real estate, which was later sold at a sheriff's sale. In an action to set aside such sale, *Held*, that the return was insufficient to authorize the filing of the transcript, and execution issued thereon and consequent sale were void. *Merrick et. al.* v. *Carter* (1903),—Ill.—, 68 N. E. 750.

The justice act provides that when it shall appear by the return of the execution that the defendant has not personal property within the county sufficient to satisfy the judgment and costs and the plaintiff desires to have the same levied on real property, it shall be lawful for the justice to certify to the clerk of the circuit court a transcript which shall have the effect of a judgment in said court, and execution shall issue out of that court. Such a return as was made in this case falls short of the requirements of a proper return according to the act. A proper return is a precedent to the right to file a transcript with the circuit clerk. *Wooters* v. *Joseph*, 137 Ill. 113; *Hobson* v. *McCambridge*, 130 Ill. 367. The court said this return might have been true and yet the defendant might have had ample personal property in the county to satisfy the execution. Other instances similar to this are found in *McDowell* v *Clark*, 68 N. C. 118, where "wholly unsatisfied" was held to be insufficient, and in *Langford* v. *Few*, 146 Mo. 152, where the holding was similar as to the return "not satisfied."

LANDLORD AND TENANT—HOTEL—FIRE ESCAPE—DUTY TO CONSTRUCT.—Defendants were the owners in fee of two dwelling houses, which they had leased as one building, for ten years, to be used and occupied as a hotel, and for no other purpose without their written assent. All repairs were to be made by the lessees upon obtaining the consent of the lessors.

The plaintiff was a lodger occupying a room on the third floor of the building, and because of the lack of fire escapes, was compelled to jump to the pavement below, to escape from the burning building. Plaintiff suffered severe injuries and brought suit to recover for the negligence of the defendant, in not providing fire escapes as required by law. *Held*, under the law providing that it shall be the duty of the owner, proprietor, lessee or keeper of every hotel, etc., to construct fire escapes, and making it a misdemeanor for the owner, proprietor, lessee or manager of any building within the terms of the act to neglect or refuse to comply therewith, the duty of constructing a fire escape upon a building leased for hotel purposes rests on the lessee, and not on the owner or lessor. *Johnson* v. *Snow* (1903),—Mo.—, 76 S W. Rep. 675.

As a rule it is the duty of the tenant to keep the premises free from defects which may prove injurious to others. See *City of Lowell* v *Spaulding*, 4 Cushing 277, 50 Am. Dec. 75 and notes. But when the premises are in a defective condition at the time of the lease and are to be used in the manner contemplated by the parties, the duty rests upon the lessor and not upon the

lessee. See *Swords* v. *Eager*, 59 N. Y. 28; *House* v. *Metcalf*, 27 Conn. 630. Statutes requiring buildings to be provided with fire escapes impose a duty unknown to the common law. *Jones* v. *Granite Mills*, 126 Mass. 84, 30 Am. Rep. 661. Under the facts of the present case, it would seem to be the better rule, to place the duty of providing fire escapes upon the lessor and not upon the lessee, since such an improvement is one of a permanent nature, and it has been so held. *Landgraf* v. *Kuh*, 188 Ill. 484, 59 N. E. Rep. 501.

The principal case however finds support in the construction of similar statutes in Ohio and Pennsylvania, where the lessor has been relieved from liability and the whole duty, in the absence of contract, held to rest upon the lessee. *Schott* v. *Harvey*, 105 Pa. St. 222, 51 Am. Rep. 201; *Lee* v. *Smith*, 42 Ohio St. 458, 51 Am. Rep. 839.

MASTER AND SERVANT—FELLOW SERVANT—MASTER'S DUTY—DELEGATION OF DUTY.—While testing a new machine which was attached to other machinery, the defendant's superintendent ordered the speed of the engine to to be increased without first detatching the other machinery. As a result of the increased speed an emery wheel attached to the other machinery burst and killed one of the laborers. In an action against the company for damages for for the death of the laborer, *Held*, the act of the superintendent in increasing the speed of the engine without detaching the machinery was the negligent act of a vice principal for which the defendant was liable. *Skelton et al* v. *Pacific Lumber Co.* (1903),— Cal. —, 74 Pac. Rep. 13.

The court holds that the question, whether one is the fellow servant of another is to be determined by the nature of the act which caused the injury without regard to the rank or grade of the servants. It was the duty of the defendant to see that the machinery was reasonably safe, and if the master delegate such a duty to the greatest or the least of his servants, such servant, in discharging that duty, is a vice principal—he is in the master's shoes. The courts are not in accord as to the proper test for the fellow servant relation, but the one applied in the principal case is approved in several courts of this country. *Jenkins* v. *Richmond & D. R. Co.*, 39 S. C 507; *Mann* v. *Delaware & H. Canal Co* , 91 N. Y. 495; *Wooden* v. *Western N. Y. & P. R. Co.*, 147 N. Y. 508; *Norfolk & Western R. Co.*,v. *Donelly*, 88 Va. 853; *Baltimore & Ohio R. Co.* v. *Baugh*, 149 U. S. 368; *New England R. Co.* v. *Conroy*, 175 U. S. 323; *Vartanian* v. *New York, N. H & H. R. Co.* (1903), —R. I.—, 56 Atl. Rep. 184; *Coal Creek Min. Co.* v *Davis*, 90 Tenn. 711; *Jackson* v. *Norfolk & Western R. Co.*, 43 W. Va. 380, 46 L. R. A. 337 and notes; *Van Derhoff* v. *New York Cent. & H. R. R. Co.* (1903), 84 N. Y. Supp. 650; 2 JAGGARD ON TORTS, 1043. See 2 MICHIGAN LAW REVIEW 79. For a discussion of the fellow servant doctrine in England see Pollock on Torts (6th ed.), p. 95 et. seq.

MASTER AND SERVANT—INJURIES TO SERVANT—FELLOW SERVANTS—BRAKEMAN AND CONDUCTOR.—The conductor of a construction train ordered the brakeman to make a coupling in a defective manner. While obeying this order the brakeman was injured. In an action against the railroad company for the injury, *Held*, the plaintiff could recover. *Grout et al.* v. *Tacoma Eastern R. Co.* (1903),—Wash —, 74 Pac. Rep. 665.

One of the defenses was that the brakeman and conductor were fellow servants, but the court held that they were not fellow servants, so as to charge the brakeman with the conductor's negligence. The decision is based upon the "superior servant" rule as was the earlier case of *Northern Pacific R. Co.* v. *O'Brien*, 1 Wash. 599. This doctrine finds its ablest support in Ohio and Kentucky. *Little Miami R. Co.* v. *Stevens*, 20 Ohio, 415; *Cleveland C.*